

House Bill 1314 (COMMITTEE SUBSTITUTE)

By: Representative Ralston of the 7th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 5 and Chapter 18 of Title 15 of the Official Code of Georgia Annotated,
2 relating to appeal and error and prosecuting attorneys, respectively, so as to change
3 provisions relating to the state's right to appeal in criminal cases; to authorize the state to
4 have the right of direct appeal in certain cases rather than having to seek certification; to
5 provide the state with the right to appeal orders granting a defendant a bench trial over the
6 objection of the state; to provide for direct appeal when a district attorney or solicitor is
7 disqualified from prosecuting a case; to remove references to the former City Court of
8 Atlanta; to amend Code Section 36-32-1 of the Official Code of Georgia Annotated, relating
9 to establishment of municipal courts, so as to correct a cross-reference; to provide for related
10 matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 Title 5 of the Official Code of Georgia Annotated, relating to appeal and error, is amended
14 by revising subsection (a) of Code Section 5-5-1, relating to the power of probate, superior,
15 state, juvenile, and City of Atlanta courts, as follows:

16 "(a) The superior, state, and juvenile courts ~~and the City Court of Atlanta~~ shall have power
17 to correct errors and grant new trials in cases or collateral issues in any of the respective
18 courts in such manner and under such rules as they may establish according to law and the
19 usages and customs of courts."

20 **SECTION 2.**

21 Said title is further amended by revising subsection (a) of Code Section 5-7-1, relating to
22 orders, decisions, or judgments appealable by the state in criminal cases, as follows:

23 "(a) An appeal may be taken by and on behalf of the State of Georgia from the superior
24 courts, state courts, ~~City Court of Atlanta~~, and juvenile courts and such other courts from
25 which a direct appeal is authorized to the Court of Appeals of Georgia and the Supreme

1 Court of Georgia in criminal cases and adjudication of delinquency cases in the following
2 instances:

3 (1) From an order, decision, or judgment setting aside or dismissing any indictment,
4 accusation, or petition alleging that a child has committed a delinquent act or any count
5 thereof;

6 (2) From an order, decision, or judgment arresting judgment of conviction or
7 adjudication of delinquency upon legal grounds;

8 (3) From an order, decision, or judgment sustaining a plea or motion in bar, when the
9 defendant has not been put in jeopardy;

10 (4) From an order, decision, or judgment suppressing or excluding evidence illegally
11 seized or excluding the results of any test for alcohol or drugs in the case of motions
12 made and ruled upon prior to the impaneling of a jury or the defendant being put in
13 jeopardy, whichever occurs first;

14 (5) From an order, decision, or judgment of a court where the court does not have
15 jurisdiction or the order is otherwise void under the Constitution or laws of this state;

16 (6) From an order, decision, or judgment of a superior court transferring a case to the
17 juvenile court pursuant to subparagraph (b)(2)(B) of Code Section 15-11-28;

18 (7) From an order, decision, or judgment ~~of a superior court~~ granting a motion for new
19 trial or an extraordinary motion for new trial;

20 (8) From an order, decision, or judgment denying a motion by the state to recuse or
21 disqualify a judge made and ruled upon prior to the defendant being put in jeopardy; ~~or~~

22 (9) From an order, decision, or judgment issued pursuant to subsection (c) of Code
23 Section 17-10-6.2; or

24 (10) From an order, decision, or judgment in the superior or state court granting the
25 defendant a bench trial over the objection of the state."

26 SECTION 3.

27 Said title is further amended by revising Code Section 5-7-2, relating to certification required
28 for immediate review of nonfinal orders, decisions, or judgments, as follows:

29 "5-7-2.

30 (a) Other than from an order, decision, or judgment sustaining a motion to suppress
31 evidence illegally seized Except as provided in subsection (b) of this Code section, in any
32 appeal under this chapter where the order, decision, or judgment is not final, it shall be
33 necessary that the trial judge certify within ten days of entry thereof that the order,
34 decision, or judgment is of such importance to the case that an immediate review should
35 be had.

1 (b) The state shall have the right of direct appeal from any order, decision, or judgment as
2 described in paragraphs (4), (6), (7), (8), (9), or (10) of subsection (a) of Code Section
3 5-7-1, subsection (g) of Code Section 15-18-5, or subsection (d) of Code Section
4 15-18-65."

5 **SECTION 4.**

6 Chapter 18 of Title 15 of the Official Code of Georgia Annotated, relating to prosecuting
7 attorneys, is amended by revising subsection (g) of Code Section 15-18-5, relating to
8 appointment of substitute for absent or disqualified district attorney, as follows:

9 "(g) Any order entered by a court disqualifying a district attorney's office from engaging
10 in the prosecution shall specify the legal basis for such order. The district attorney may,
11 on behalf of the state and prior to the defendant in a criminal case being put in jeopardy,
12 ~~apply for a certificate of immediate review~~ directly appeal as provided in Code Section
13 5-7-2, and such order shall be subject to appellate review as provided in Chapter 7 of Title
14 5."

15 **SECTION 5.**

16 Said chapter is further amended by revising subsection (d) of Code Section 15-18-65, relating
17 to a solicitor's disqualification from interest or relationship, as follows:

18 "(d) Any order entered by a court disqualifying a solicitor-general's office from engaging
19 in the prosecution shall specify the legal basis of such order. The solicitor-general may,
20 on behalf of the state and prior to the defendant in a criminal case being put in jeopardy,
21 ~~apply for a certificate of immediate review~~ directly appeal as provided in Code Section
22 5-7-2, and such order shall be subject to appellate review as provided by Chapter 7 of Title
23 5."

24 **SECTION 6.**

25 Code Section 36-32-1 of the Official Code of Georgia Annotated, relating to establishment
26 of municipal courts, is amended by revising subsection (a) as follows:

27 "(a) Each municipal corporation of this state shall, unless otherwise provided in the local
28 law relating to a particular municipal corporation, be authorized to establish and maintain
29 a municipal court having jurisdiction over the violation of municipal ordinances and over
30 such other matters as are by general law made subject to the jurisdiction of municipal
31 courts. Any such court shall be styled as a municipal court. Any reference in this Code or
32 in any local law to a corporate court, police court, recorder's court, mayor's court, or any
33 such court known by any other name which has jurisdiction over the violation of municipal
34 offenses shall be deemed to mean a municipal court. Except in this Code section ~~and in the~~

1 ~~laws relating to the City Court of Atlanta,~~ the terms 'corporate court,' 'corporate courts,'
2 'police court,' 'police courts,' 'recorder's court,' 'recorders' courts,' 'mayor's court,' and
3 'mayors' courts,' when such terms refer to a court of a municipal corporation, are stricken
4 wherever they appear in any general or local law of this state and the term 'municipal court'
5 or 'municipal courts,' whichever is appropriate, is inserted in lieu thereof. The change in
6 the name of any such court as provided for by Article VI, Section X, Paragraph I of the
7 Constitution of the State of Georgia and by this Code section shall not affect the validity
8 of any action or prosecution in such court."

9 **SECTION 7.**

10 This Act shall become effective upon its approval by the Governor or upon its becoming law
11 without such approval.

12 **SECTION 8.**

13 All laws and parts of laws in conflict with this Act are repealed.